

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 2

**DOCKET NO.:** 2007-1991-AIR-E **TCEQ ID:** RN100816123 **CASE NO.:** 35091**RESPONDENT NAME:** Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Desert Hills Car Wash &amp; Convenience Store, 7373 North Mesa Street, El Paso, El Paso County</p> <p><b>TYPE OF OPERATION:</b> Vehicle washing and gasoline dispensing business</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondents have expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 9, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> <b>TCEQ Attorney/SEP Coordinator:</b> None <b>TCEQ Enforcement Coordinator:</b> Ms. Sidney Wheeler, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-4078; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 <b>Respondents:</b> Mr. Daniel R. Harris, President, Desert Hills Car Wash &amp; Convenience Store, 7373 North Mesa Street, El Paso, Texas 79912 Ms. D. Patricia Harris, Vice President, Desert Hills Car Wash &amp; Convenience Store, 7373 North Mesa Street, El Paso, Texas 79912 <b>Respondents' Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 2, 2007</p> <p><b>Date of NOE Relating to this Case:</b> November 30, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failure to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31. Specifically, the mid-grade sample taken from pump No. 10 was found to be 2.1% oxygen content by weight and the premium gasoline sample taken from pump No. 10 was found to be 1.5% oxygen content by weight [30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$2,400</p> <p><b>Total Deferred:</b> \$480  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,920</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN601255573 and CN603277252</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondents to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure that gasoline supplied, sold, or dispensed for use as motor vehicle fuel in El Paso County between October 1 and March 31 of each year shall have the minimum oxygen content of 2.7% by weight at all pumps at the Site; and</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification of compliance and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): EE2238R



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

**TCEQ**  
**DATES**

Assigned PCW	3-Dec-2007	Screening	10-Dec-2007	EPA Due	
	7-Jan-2008				

**RESPONDENT/FACILITY INFORMATION**

Respondent	Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store		
Reg. Ent. Ref. No.	RN100816123		
Facility/Site Region	6-EI Paso	Major/Minor Source	Minor

**CASE INFORMATION**

Enf./Case ID No.	35091	No. of Violations	1
Docket No.	2007-1991-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Sidney Wheeler
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$2,000**
**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **Subtotals 2, 3, & 7** **\$400**

Notes: Penalty enhancement due to one agreed final enforcement order containing a denial of liability.

**Culpability** **Subtotal 4** **\$0**

Notes: The Respondents do not meet the culpability criteria.

**Good Faith Effort to Comply** **Subtotal 5** **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondents do not meet the good faith criteria.

Total EB Amounts	\$15	<b>Subtotal 6</b>	<b>\$0</b>
Approx. Cost of Compliance	\$600		

0% Enhancement\*  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$2,400**
**OTHER FACTORS AS JUSTICE MAY REQUIRE**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Adjustment** **\$0**

Notes:

**Final Penalty Amount** **\$2,400**
**STATUTORY LIMIT ADJUSTMENT**
**Final Assessed Penalty** **\$2,400**
**DEFERRAL**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Adjustment** **-\$480**

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$1,920**

Screening Date 10-Dec-2007

Docket No. 2007-1991-AIR-E

PCW

Respondent Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash &amp; Convenience Store

Policy Revision 2 (September 2002)

Case ID No. 35091

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN100816123

Media [Statute] Air

Enf. Coordinator Sidney Wheeler

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Penalty enhancement due to one agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 20%

<b>Screening Date</b> 10-Dec-2007		<b>Docket No.</b> 2007-1991-AIR-E		<b>PCW</b>																
Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store																				
<b>Respondent</b>		<i>Policy Revision 2 (September 2002)</i>																		
<b>Case ID No.</b> 35091		<i>PCW Revision November 6, 2007</i>																		
<b>Reg. Ent. Reference No.</b> RN100816123																				
<b>Media [Statute]</b> Air																				
<b>Enf. Coordinator</b> Sidney Wheeler																				
<b>Violation Number</b>		<input type="text" value="1"/>																		
<b>Rule Cite(s)</b>		30 Tex. Admin. Code § 114.100(a) and Tex. Health & Safety Code § 382.085(b)																		
<b>Violation Description</b>		Failed to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31, as documented during an investigation conducted on October 2, 2007. Specifically, the mid-grade sample taken from pump No. 10 was found to be 2.1% oxygen content by weight and the premium gasoline sample taken from pump No. 10 was found to be 1.5% oxygen content by weight.																		
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>																
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																				
<b>OR</b>	<table border="1" style="margin: auto;"> <tr> <td></td> <th colspan="3">Harm</th> </tr> <tr> <th>Release</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Harm			Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	x	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Harm																		
	Release	Major	Moderate	Minor																
	Actual	<input type="text"/>	<input type="text"/>	x																
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
<b>Percent</b>				<input type="text" value="10%"/>																
<b>&gt;&gt; Programmatic Matrix</b>																				
<b>OR</b>	<table border="1" style="margin: auto;"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Falsification	Major	Moderate	Minor		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>						
		Falsification	Major	Moderate	Minor															
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>															
	<b>Percent</b>				<input type="text" value="0%"/>															
<b>Matrix Notes</b>				Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.																
<b>Adjustment</b>				<input type="text" value="\$9,000"/>																
				<input type="text" value="\$1,000"/>																
<b>Violation Events</b>																				
<b>Number of Violation Events</b>		<input type="text" value="2"/>	<b>Number of violation days</b>																	
		<input type="text" value="70"/>																		
mark only one with an x	daily	<input type="text"/>	<b>Violation Base Penalty</b>																	
	monthly	<input type="text"/>																		
	quarterly	<input type="text"/>																		
	semiannual	<input type="text"/>																		
	annual	<input type="text"/>																		
	single event	x																		
Two single events are recommended.																				
<b>Economic Benefit (EB) for this violation</b>																				
<b>Estimated EB Amount</b>		<input type="text" value="\$15"/>	<b>Statutory Limit Test</b>																	
			<b>Violation Final Penalty Total</b>																	
			<input type="text" value="\$2,400"/>																	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$2,400"/>																

**Economic Benefit Worksheet****Respondent** Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store**Case ID No.** 35091**Reg. Ent. Reference No.** RN100816123**Media** Air**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$600	2-Oct-2007	31-Mar-2008	0.5	\$15	n/a	\$15
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost of implementing procedures to ensure the required oxygenated fuel content is maintained. Date required is the investigation date and the final date is the last day of the control period of oxygenated fuel requirements.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$600

**TOTAL**

\$15

# Compliance History

Customer/Respondent/Owner-Operator:	CN603277252	HARRIS, D PATRICIA	Classification: AVERAGE	Rating: 9.00
Regulated Entity:	RN100816123	DESERT HILLS CAR WASH & CONVENIENCE STORE	Classification: AVERAGE	Site Rating: 9.00
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION		ACCOUNT NUMBER REGISTRATION	EE2238R 73172
Location:	7373 N MESA ST, EL PASO, TX, 79912			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	May 06, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 10, 2002 to December 10, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Sidney Wheeler Phone: (512) 239-4969

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
 

Effective Date: 08/07/2003 ADMINORDER 2002-1195-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.346(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(4)(B)

Description: Failure to ensure that the UST registration and self certification form is fully and accurately completed and submitted to the agency in a timely manner.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3467(a)  
30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(i)

Description: Failure to make available to a common carrier a valid, current TCEQ delivery certificate before receiving fuel deliveries.
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	07/07/2003	(130566)
2	10/21/2003	(252703)
3	07/26/2004	(278517)
4	11/29/2005	(438728)
5	08/29/2006	(486596)
6	04/27/2007	(557964)
7	07/31/2007	(565378)
8	11/29/2007	(600906)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.  
N/A





- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



# Compliance History

Customer/Respondent/Owner-Operator:	CN601255573	HARRIS, DANIEL R	Classification: AVERAGE	Rating: 9.00
Regulated Entity:	RN100816123	DESERT HILLS CAR WASH & CONVENIENCE STORE	Classification: AVERAGE	Site Rating: 9.00
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION		ACCOUNT NUMBER REGISTRATION	EE2238R 73172
Location:	7373 N MESA ST, EL PASO, TX, 79912		Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	May 06, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 10, 2002 to December 10, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Sidney Wheeler		Phone:	(512) 239-4969

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
- Effective Date: 08/07/2003 ADMINORDER 2002-1195-PST-E
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- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 07/07/2003 | (130566) |
| 2 | 10/21/2003 | (252703) |
| 3 | 07/26/2004 | (278517) |
| 4 | 11/29/2005 | (438728) |
| 5 | 08/29/2006 | (486596) |
| 6 | 04/27/2007 | (557964) |
| 7 | 07/31/2007 | (565378) |
| 8 | 11/29/2007 | (600906) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.  
N/A



G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING**

**DANIEL R. HARRIS AND  
D. PATRICIA HARRIS  
DBA DESERT HILLS CAR WASH &  
CONVENIENCE STORE  
RN100816123**

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**BEFORE THE**

**TEXAS COMMISSION ON**

**ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1991-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store ("the Respondents") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a vehicle washing and gasoline dispensing business at 7373 North Mesa Street in El Paso, El Paso County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about December 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.





6. An administrative penalty in the amount of Two Thousand Four Hundred Dollars (\$2,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Nine Hundred Twenty Dollars (\$1,920) of the administrative penalty and Four Hundred Eighty Dollars (\$480) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owners and operators of the Site, the Respondents are alleged to have failed to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 through March 31, in violation of 30 TEX. ADMIN. CODE § 114.100(a) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, the mid-grade sample taken from pump No. 10 was found to be 2.1% oxygen content by weight and the premium gasoline sample taken from pump No. 10 was found to be 1.5% oxygen content by weight.

## **III. DENIALS**

The Respondents generally deny each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store, Docket No. 2007-1991-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure that gasoline supplied, sold, or dispensed for use as motor vehicle fuel in El Paso County between October 1 and March 31 of each year shall have the minimum oxygen content of 2.7% by weight at all pumps at the Site; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087



with a copy to:

Air Section, Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



Daniel R. Harris and D. Patricia Harris dba Desert Hills Car Wash & Convenience Store  
DOCKET NO. 2007-1991-AIR-E  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zeller  
For the Executive Director

5/11/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Daniel R. Harris  
Signature

2-28-08  
Date

DANIEL R. HARRIS  
Name (Printed or typed)  
Authorized Representative of  
Daniel R. Harris dba Desert Hills Car Wash &  
Convenience Store

PRESIDENT  
Title

D. Patricia Harris  
Signature

2-28-08  
Date

D. PATRICIA HARRIS  
Name (Printed or typed)  
Authorized Representative of  
D. Patricia Harris dba Desert Hills Car Wash &  
Convenience Store

Vice President  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

